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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ATLANTIC HEALTHCARE BENEFITS TRUST, NATIONAL INSURANCE CONSULTANTS, INC., UNITED HEALTH ASSOCIATION OF AMERICA, *et al.*,

Petitioners,

v.

ROBERT R. GOOGINS, COMMISSIONER OF THE DEPARTMENT OF INSURANCE OF THE STATE OF CONNECTICUT, *et al.*,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITION FOR A WRIT OF CERTIORARI

MICHAEL D. SINGER
2705 Bayview Drive
Suite B
Manhattan Beach, CA 90266
(310) 545-3826
Counsel of Record for Petitioners Atlantic Healthcare Benefits Trust, et al.

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA) PREEMPTS THE STATE OF CONNECTICUT FROM OUTLAWING SELF-FUNDED MULTIPLE-EMPLOYER ERISA WELFARE BENEFIT PLANS UNDER THE GUISE OF PERMISSIBLE STATE REGULATION BY DECLARING SUCH PLANS TO BE ILLEGAL INSURANCE COMPANIES THAT MUST RESTRUCTURE AS STATE-LICENSED INSURANCE COMPANIES OUTSIDE THE SCOPE OF ERISA IN ORDER TO PROVIDE EMPLOYEE BENEFITS TO CONNECTICUT RESIDENTS;

2. WHETHER THE STATE OF CONNECTICUT'S FAILURE TO ENACT LEGISLATION SPECIFICALLY DESIGNED TO REGULATE SELF-FUNDED MULTIPLE-EMPLOYER ERISA PLANS AND PROSECUTION OF SUCH PLANS UNDER EXISTING STATUTES DESIGNED TO REGULATE INSURANCE COMPANIES VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE U.S. CONSTITUTION.

PARTIES TO THE PROCEEDING

Petitioners ATLANTIC HEALTHCARE BENEFITS TRUST; JEFFREY C. NEAL, as Trustee of ATLANTIC HEALTHCARE BENEFITS TRUST, UNITED HEALTHCARE ASSOCIATION OF AMERICA, INC. AND NATIONAL INSURANCE CONSULTANTS, INC., were plaintiffs-appellants in Civil Action No. 92-7955 below.

Respondents ROBERT R. GOOGINS, COMMISSIONER OF THE DEPARTMENT OF INSURANCE OF THE STATE OF CONNECTICUT; AND THE DEPARTMENT OF INSURANCE OF THE STATE OF CONNECTICUT were defendants-appellees below.

The parties before this Court are the same as the parties below.

United Healthcare Association of America, Inc. and National Insurance Consultants, Inc. have no parent or subsidiary corporations.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
STATEMENT OF JURISDICTION OF THE COURT	2
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
I. THE COURT OF APPEALS' DECISION RAISES IMPORTANT ISSUES CONCERNING THE ABILITY OF SMALL BUSINESS EMPLOYERS TO POOL RESOURCES IN ORDER TO SELF-FUND A BENEFIT PROGRAM UNDER ERISA AND CONFLICTS WITH DECISIONS BY THIS COURT AND OTHER COURTS OF APPEAL	8
II. THE COURT OF APPEALS' DECISION RAISES AN IMPORTANT CONSTITUTIONAL ISSUE CONCERNING THE ABILITY OF STATES TO USE A LIMITED EXCEPTION TO ERISA PREEMPTION OF STATE INSURANCE REGULATION TO PROHIBIT MULTIPLE EMPLOYER ERISA PLANS FROM OPERATING UNDER ERISA TO PROVIDE BENEFITS TO RESIDENTS OF A STATE BY REQUIRING SUCH PLANS TO RESTRUCTURE AS INSURANCE COMPANIES IN ORDER TO BE REGULATED EXCLUSIVELY BY THE STATE AND ONLY IF THE STATE ELECTS TO ISSUE AN INSURANCE LICENSE AND CONFLICTS WITH DECISIONS BY THIS COURT	14
CONCLUSION	16

TABLE OF AUTHORITIES

Cases Page

Atlantic Healthcare Benefits Trust v. Googins, 1993 U.S. App. LEXIS 19774 (2d Cir. Aug. 3, 1993) .. 1
Florida Lime & Avacad. Growers v. Paul, 373 U.S. 132 (1963) 14
FMC Corp. v. Holliday, 111 S.Ct. 403 (1990) 8, 11, 14
In Re Affiliated Food Stores Inc. Group Ben. Tr., 134 B.R. 215 (N.D. Tex. 1991) 14
Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985) 11
Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1989) .. 13
United Wire Welfare Fund v. Morristown Mem. Hospital, 995 F.2d 1179, 16 EBC 2182 (3d Cir. 1993) 13

Statutes and Congressional Material

28 U.S.C. § 1254(1) 2
29 U.S.C. § 1001, *et seq.* 4
29 U.S.C. § 1002(1) 6, 9
29 U.S.C. § 1002(40) 6, 9
29 U.S.C. § 1103(c)(1) 9
29 U.S.C. § 1104(a)(1)(A) 12
29 U.S.C. § 1132(e)(1) 6
29 U.S.C. § 1144 ..... 2, 10
29 U.S.C. § 1144(b)(6)(A)(ii) 9
Conn. Gen. Stat. § 38a-72 12
Constitution of the United States, Amendment 14.. 3, 4
Rule 56, F.R.Civ.P. 6
128 *Cong.Rec.House* 30367 (Dec. 13, 1982) 11

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PETITION FOR A WRIT OF CERTIORARI

Atlantic Healthcare Benefits Trust, *et al.*, (Atlantic) respectfully petition for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Second Circuit, entered in this proceeding on August 3, 1993.

OPINIONS BELOW

The Second Circuit Court of Appeals' opinion (available on Westlaw, 1993 WL 286792, and LEXIS, 1993 App. LEXIS 19774) is reprinted in the appendix (App.) at p. 1a. The district court decision, No. 2:92cv00212

(PCD) (D.C.Conn. July 27, 1992), is reprinted in the appendix at p. 12a. Bulletin Number HC-43, issued by the Connecticut Insurance Commissioner on July 25, 1990, is reprinted in the appendix at 18a.

STATEMENT OF JURISDICTION OF THE COURT

The judgment of the Court of Appeals for the Second Circuit was entered on August 3, 1993, and no Petition for Rehearing was filed. This Court has jurisdiction to review the judgment of the Second Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

29 U.S.C. § 1144. Other Laws

(a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003 (a) of this title and not exempt under section 1003 (b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and application

* * * *

(2)(A) Except as provided in subparagraph (B), nothing in this chapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such

a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

* * * *

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangements to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

* * * *

Constitution of the United States of America, Amendment 14

Section 1. Citizens of the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case [1] concerns a critical health care access issue. Specifically, at issue is the ability of small business employers to band together and pool resources in order to self-fund a program of health benefits for their collective employees. The framework for self-funded employee beneft plans is set forth in the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. § 1001 *et seq.* Without the self-funding alternative to traditional health insurance (which in many cases is either prohibitively expensive or simply unavailable to certain businesses), the number of Americans without health insurace would far outnumber the current estimate totaling 37 million people.

ERISA provides for three primary forms of self-funded employee benefit plans: single-employer plans (usually formed by large corporations and companies under common control), "multiemployer" plans formed pursuant to collective bargaining efforts of organized labor unions, and "multiple employer welfare arrangements" (MEWAs), generally involving smaller businesses joined through an association of employers. With respect to self-funded single-employer and union plans, ERISA unequivocally provides an exclusive regulatory scheme and contains an

[1] A companion petition for certiorari to the Third Circuit filed concurrently (*Atlantic Healthcare Benefits Trust v. Foster*) discusses the identical issues in the context of the Pennsylvania insurance licensing statute. Consequently, certain elements of the Statement of the Case and Reasons for Granting the Writ appear in both petitions.

expansive preemption provision that prohibits states from regulating such entities under state insurance laws. Self-funded MEWAs that qualify as plans under ERISA are also within the federal regulatory scheme but are subject to a limited exception to preemption which allows the application of state insurance regulations which are not inconsistent with Title I of ERISA.

Ambiguities regarding the preemption exception pertaining to MEWAs have resulted in states adopting differing approaches to regulating such plans, making it difficult and in some cases impossible for such plans to provide benefits to residents of several states, as envisioned by Congress in enacting ERISA. Many states have enacted legislation specifically designed toward regulating self-funded MEWA ERISA plans. Other states have elected to allow such plans to provide benefits without state regulation. Several states, however, have exceeded their regulatory authority under the preemption exception by issuing bulletins or press releases declaring that self-funded MEWA ERISA plans are "illegal insurers" that must cease operation as ERISA trusts and obtain a certificate of authority to transact the business of insurance, requiring restructuring and capitalization as a corporate insurance entity outside the federal regulatory scheme and completely a creature of state regulation, and allowed to provide benefits only upon the discretionary approval and issuance of an insurance license by the State. The State of Connecticut has followed the latter approach, making a public effort to prohibit its residents from obtaining employee benefits through such plans. *See* app. p. 18a.

1. The District Court Action.

Atlantic Healthcare Benefits Trust is a self-funded trust organized in February 1991 pursuant to ERISA by United Healthcare Association of America (UHAA) and administered by National Insurance Consultants, Inc. (NIC). Atlantic was established by UHAA and is maintained and controlled by a benefit committee representative of the

employees who participate in the trust, which provides a pool of employer contributions from which to pay health and welfare benefits on behalf of the employer members of UHAA, the employees of such members and the dependents of such employees. Accordingly, Atlantic qualifies as an employee welfare benefit plan under ERISA, 29 U.S.C. § 1002(1), organized as a self-funded MEWA, 29 U.S.C. § 1002(40).

The Connecticut Department of Insurance (DOI) has adopted a policy that all self-funded MEWAs, including both those that qualify as employee welfare benefit plans under ERISA and those that do not, are unauthorized insurers under the insurance provisions of the Connecticut Statutes. App. p. 18a. The DOI began an investigation of Atlantic and indicated it would be issuing an order requiring it to cease and desist providing benefits. In response, Atlantic brought an action for declaratory and injunctive relief against the DOI Commissioner in U.S. District Court seeking a determination that the trust qualified as a plan under ERISA and that regulatory efforts by the State of Connecticut requiring it to restructure as an insurance company and operate outside the scope of ERISA were preempted. Jurisdiction in the action was predicated on the exclusive federal jurisdiction provisions conferred on cases brought by plans and plan fiduciaries to determine rights under ERISA, 29 U.S.C. § 1132(e)(1).

Following the filing of the complaint, the parties filed cross motions for summary judgment pursuant to Rule 56, F.R.Civ.P. Atlantic asserted it was an ERISA benefit plan and that the Connecticut statutes invoked against Atlantic by the DOI in an attempt to regulate it as an insurance company were inconsistent with and hence preempted by ERISA. Specifically, Atlantic asserted that the requirement of a certificate of authority to transact the business of insurance would remove any plan from the regulatory ambit of ERISA and bring it wholly within the state regulatory scheme.

The DOI asserted that as a matter of law, regardless of whether Atlantic qualified as an employee benefit plan under ERISA, as a self-funded MEWA it was subject to state insurance regulation requiring licensing as an insurance company and prosecution under unauthorized insurer statutes for providing employee benefits without a certificate of authority.

The district court did not rule on the issue of Atlantic's qualification as an ERISA plan but found that "the Commissioner seeks to regulate plaintiffs' enterprise in conformity with local insurance codes which are found not to be preempted by ERISA." App. p. 16a. Summary judgment was granted in favor of the defendant Insurance Commissioner and the action dismissed.

2. The Second Circuit Court of Appeals' Decision.

The Second Circuit affirmed the district court decision. The Second Circuit rejected arguments by Atlantic that the Connecticut insurance licensing scheme is inconsistent with and preempted by ERISA. The court ruled that a trust can become licensed as an insurance company under Connecticut law and apparently disagreed with Atlantic and the Congressman who authored the MEWA amendment that the transformation into an insurance company effectively removes a plan from federal regulation and places it solely within the state scheme. App. pp. 9a-10a. The Second Circuit refused to follow decisional law requiring a specific regulatory scheme for ERISA plan MEWAs and held that regulation of ERISA plans as insurance companies under existing laws designed solely for non-ERISA plans was envisioned by Congress in creating the MEWA amendment to ERISA. App. pp. 8a-9a. Finally, the Second Circuit ruled that funding a plan as an insurance company, payment of premium taxes and contributions to a claims guarantee fund for insolvent insurance companies did not result in the expenditure of funds other than for the exclusive purposes of paying benefit claims

and administrative expenses solely inuring to the benefit of Atlantic but instead constituted reasonable administrative expenses in the form of state regulatory fees. App. p. 10a. This Petition follows.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' DECISION RAISES IMPORTANT ISSUES CONCERNING THE ABILITY OF SMALL BUSINESS EMPLOYERS TO POOL RESOURCES IN ORDER TO SELF-FUND A BENEFIT PROGRAM UNDER ERISA AND CONFLICTS WITH DECISIONS BY THIS COURT AND OTHER COURTS OF APPEAL.

This case raises an important issue regarding health benefits, a topic that is on the forefront of discussion across the entire nation. With historic efforts currently under way to work toward a solution to the country's health care crisis, the action of the State of Connecticut to increase the number of uninsured Americans through a crusade to eliminate self-funded multiple employer benefit plans borders on the unconscionable. The decision of the Second Circuit condones the use of ERISA by the States to take away the right to self fund health benefit programs that Congress has expressly given and which Congress determined not to withdraw when it amended ERISA to provide for limited State regulation concurrent with the full scope of federal regulation. Since such State action is inconsistent with Congressional intent and preempted by ERISA, this Court should grant *certiorari* to resolve interpretative ambiguities, approaches and conflicts among the states and enunciate a clear explication of ERISA preemption as applicable to self-funded MEWAs.

This Court has examined the scope of permissible state regulation with respect to self-funded ERISA plans and firmly ruled that all regulation under state insurance laws is preempted. *FMC Corp. v. Holliday*, 111 S.Ct. 403

(1990). The State of Connecticut Department of Insurance and the Second Circuit have apparently chosen to limit this Court's ruling in *FMC* so as to be inapplicable to self-funded MEWAs. Yet the identical justification set forth in *FMC* (referring to several articles outlining the inability of pre-ERISA state insurance statutes to effectively regulate uninsured or self-funded benefit programs) exists supporting preemption of state insurance licensing laws imposed upon multiple employer plans.

The fact is that a licensing requirement is a ruse under the guise of permissible state regulation utilized by states such as Connecticut to abolish self-funded plans. The State of Connecticut is motivated by an ancestry of traditional insurance influence and views self-funded plans as competitive enemies to traditional insurance concerns that pay generously into the state coffers through premium taxes and mandatory contributions to claims guarantee funds. ERISA plans are immune from such obligations under strict fiduciary principles that require all plan assets to inure solely to plan participants for the payment of benefits claims and reasonable administrative expenses. 29 U.S.C. § 1103(c)(1). Transforming an ERISA plan into an insurance company would result in subjection of the plan to these state economic burdens and compel the subsidization of programs outside the ERISA plan contrary to fiduciary obligations.

Congress enacted ERISA to provide a federal regulatory framework for employee pension and health plans and specifically created a mechanism for self-funding benefit plans by providing in 29 U.S.C. § 1002(1) that benefits may be funded "through the purchase of insurance or otherwise." Plans offering benefits to the employees of two or more employers may self-fund a pooled benefit program under the definition of MEWA in Section 1002 (40), subject to limited state regulation under 29 U.S.C. § 1144(b)(6)(A)(ii), the exception to ERISA's broad preemption clause at issue in this case.

The language of ERISA's preemption clause reads, in pertinent part, as follows: "Except as provided in subsection (b) of this section, the provisions of this subchapter . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan."

The "savings clause" in the subsequent subsection provides limits to preemption: "[N]othing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance." Section 1144(b)(2)(A). Thus, insurance companies are not afforded protection against state laws regulating insurance by virtue of the savings clause.

The "deemer clause," immediately following the savings clause, makes emphatically clear that *no benefit plan described in Section 1003 may be deemed to be an insurance company or other insurer* "for purposes of any law of any State purporting to regulate insurance companies, [or] insurance contracts." Section 1144(b)(2)(B) (emphasis supplied).

In 1982, in reaction to complaints about a small number of fraudulent schemes resembling ERISA plans, the Erlenborn-Burton Act was passed, creating 29 U.S.C. Section 1144(b)(6)(A). This provides a limited exception to the preemption rules for MEWAs. A distinction is made between fully insured MEWAs and self-insured or partially insured (through the purchase of stop loss or reinsurance coverage) MEWAs. In regard to self-funded (and partially insured) MEWAs, such as Atlantic, the amendment provides that, *in addition to ERISA*, "any law of any state which regulates insurance may apply *to the extent not inconsistent with the preceding sections of this subchapter.*" 29 U.S.C. Section 1144(b)(6)(a)(ii) (emphasis added).

Congress thus intended the federal regulatory scheme of ERISA under the jurisdiction of the U.S. Department

of Labor to continue to govern benefit plans, potentially supplemented by additional, limited application of some state insurance regulations. This conclusion is confirmed in the legislative history of the amendment, particularly the Congressional record: "With respect to multiple employer welfare arrangements which do not meet the definition of welfare plan, the amendment amends the ERISA preemption provision to permit limited state regulation of such plans while retaining the full scope of the Federal regulation which is presently applicable." 128 *Cong.Rec.House* 30367 (Dec. 13, 1982).

In *FMC v. Holliday, supra,* and *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724 (1985), this Court observed that ERISA treats insured plans and self-funded plans differently for preemption purposes. The reason for the difference is grounded in the interaction of the savings and deemer clause with the general preemption clause. In essence, state insurance regulation of insured plans is permissible, *but state insurance regulation of self-funded plans is preempted. Holliday,* 111 S.Ct. at 407-11; *Metropolitan Life,* 471 U.S. at 738-47. This Court reasoned that the distinction between insured and self-funded plans follows directly from the statute. "State laws that directly regulate insurance . . . do not reach self-funded employee benefit plans because the plans may not be deemed to be insurance companies." *Holliday,* 111 S.Ct. at 409.

The Second Circuit showed respect for Congressional intent that self-funded MEWA ERISA plans operate under both federal and state law by premising its ruling on the finding that a trust could be licensed as an insurance company in Connecticut. App. p. 9a. The court's mistaken notion that a hybrid self-funded ERISA plan MEWA/insurance company could exist or was envisioned by Congress makes no sense in practical application; a plan is either one or the other, not both. ERISA was intended to regulate ERISA plans, not insurance com-

panies. Moreover, ERISA expressly allows multiple employers to form qualifying employee benefit plans to provide benefits to their employees. Issuance of a certificate of authority by the State of Connecticut is discretionary. It was certainly not the intent of Congress to grant discretion to the states to determine whether to allow an ERISA plan to provide benefits.

ERISA's fiduciary provisions also require that trust funds be held for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses. 29 U.S.C. § 1104(a)(1)(A). Funding paid-in capital, surplus funds and reserves in excess of $1,000,000.00 as required under the Connecticut licensing statutes, Conn. Gen. Stat. § 38a-72, and requiring the payment of premium taxes and contributions to state claims guarantee funds for insolvent insurance companies would violate ERISA fiduciary law. The fiduciary duty to apply trust assets only for the benefit of Atlantic beneficiaries prohibits any expenditures to non-plan participants, such as the State or a claimant of an insolvent insurance company. Such requirements are thus inconsistent with ERISA and preempted. The Second Circuit erroneously determined that payment of these state regulatory fees by an ERISA plan would not violate ERISA but would constitute reasonable administrative fees.

The Second Circuit also displayed a misunderstanding of the structure of self-funded benefit programs by citing capital and reserves requirements for fully-funded MEWAs under 29 U.S.C. § 1144(b)(6)(A)(i) as a basis for the conclusion that the MEWA amendment contemplates similar requirements for self-funded MEWAs. The economic standards for reserves and contribution levels in actuality pertain to the carrier insuring the MEWA, not the plan itself. Consequently, such entities must be funded in conformity with state requirements for

insurance companies. No such requirements are necessary or applicable to self-funded plans.

Further, the restructuring of ERISA plans into insurance companies would subject the plans to the entire State law remedial scheme (unfair insurance practice acts, bad faith actions, and causes of action for fraud and punitive damages, among others) from which the framers of ERISA unequivocally intended to shield ERISA plans in order to preserve their economic ability to viably self-fund a benefit program without the specter of large court judgments threatening financial stability. This Court has consistently ruled that such state law remedies are pre-empted and unavailable to plan participants, which may bring actions against ERISA plans solely for the recovery of benefits under federal law. *See, e.g., Pilot Life Ins. Co. v. Dedeaux,* 481 U.S. 41 (1989).

The Third Circuit interprets this Court's decision in *FMC* to find for preemption if a statute has either the effect of dictating or restricting the manner in which ERISA plans structure or conduct their affairs or the effect of impairing their ability to operate simultaneously in more than one state. *United Wire Welfare Fund v. Morristown Mem. Hospital,* 995 F.2d 1179, 16 EBC 2182, 2187-2189 (3d Cir. 1993). A certificate of authority requirement constitutes a direct interference that imposes requirements on the internal design and structure of plans. Subjecting multi-state plans to differing certificate of authority requirements of differing states would make operation impossible. Consequently, the Second Circuit decision affirming a certificate of authority requirement conflicts with the Third Circuit decision in *United Wire.*

Because the Connecticult Certificate of Authority statutes conflict with ERISA and make compliance thereunder and concomitant operation as an ERISA plan a "physical impossibility," the licensing requirement upheld by the Second Circuit should have been ruled preempted.

Florida Lime & Avacad. Growers v. Paul, 373 U.S. 132, 142-43 (1963) (state statute preempted if physically impossible for compliance with both state and federal statute).

II. THE COURT OF APPEALS' DECISION RAISES AN IMPORTANT CONSTITUTIONAL ISSUE CONCERNING THE ABILITY OF STATES TO USE A LIMITED EXCEPTION TO ERISA PREEMPTION OF STATE INSURANCE REGULATION TO PROHIBIT MULTIPLE EMPLOYER ERISA PLANS FROM OPERATING UNDER ERISA TO PROVIDE BENEFITS TO RESIDENTS OF A STATE BY REQUIRING SUCH PLANS TO RESTRUCTURE AS INSURANCE COMPANIES IN ORDER TO BE REGULATED EXCLUSIVELY BY THE STATE AND ONLY IF THE STATE ELECTS TO ISSUE AN INSURANCE LICENSE AND CONFLICTS WITH DECISIONS BY THIS COURT.

The MEWA amendment allows states to enact regulations consistent with ERISA to apply to self-funded MEWA ERISA plans. Existing insurance statutes of general applicability to insurance companies are neither designed nor equipped to regulate ERISA plans. *In Re Affiliated Food Stores, Inc. Group Ben. Tr.*, 134 B.R. 215 (N.D.Tex. 1991); *FMC Corp. v. Holliday*, 111 S.Ct. at pp. 412-414 (Stevens, J. dissenting)

Several states have responsibly promulgated regulations specific to self-funded MEWAs.[2] By contrast, Connecticut has no regulatory scheme for the licensing or supervision of self-funded MEWAs. Such plans, *even if they qualify as ERISA plans*, are deemed to be fraudulent, unlicensed insurance companies and prosecuted as such. Connecticut's conduct thus falls squarely within ERISA's preemp-

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[2] *See, e.g.*, Fla. Stat. Section 624.437 (1991); Mich. C.L. Section 500.7050 (1991); N.M. Stat. Ann. Section 59A-15-20; N.C. Gen. Stat. Section 58-49-1, *et seq.*; 1992 Okla. ALS 374 (S.B. 440).

tion clause and implicates violations of constitutional rights.

The State of Connecticut provides no notice to self-funded plans that they are (in the view of the DOI) "illegally" providing benefits to Connecticut residents; the DOI simply executes seek and destroy tactics which it admits are designed to close down, rather than regulate, any self-funded MEWA coming to the attention of the DOI. In other words, the right to self-fund a benefit program for employees is taken away by the State of Connecticut in excess of jurisdiction and without due process of law under the Fourteenth Amendment of the U.S. Constitution.

Moreover, without a uniform set of regulations applicable to all self-funded MEWAs, equal protection concerns are triggered. The Commissioner is in a position to make arbitrary and perhaps discriminatory decisions by invoking unauthorized insurer statutes to prevent MEWAs of his choosing from providing employee benefits while allowing others to continue. The potential for abuse under such a selective enforcement scheme is obvious: powerful, well-funded special-interest groups such as the Blue Cross/Blue Shield entities might persuade regulators to target MEWAs that threaten their market share, and the State interest in premium taxes might further motivate the Commissioner to accommodate such a pursuit under the mantle of "protector" of consumers' interests.

Finally, access to self-funded benefit plan arrangements is expressly provided to employers under the authority of ERISA. Since issuance of a certificate of authority is within the sole discretion of the State of Connecticut, the State is improperly empowered to block employer access to the federal regulatory program by denying a license request.

Had Congress intended in amending ERISA to allow states to abolish self-funded benefit plans, it would have

so provided. The regulatory and interpretative confusion following the amendment of ERISA and contributing to the abrogation of self-funding rights and violations of due process and equal protection under the laws is a result repugnant to ERISA and the Constitution of the United States that affects the benefits of thousands utilizing MEWAs nationwide. This Court can rectify the problem by granting *certiorari*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL D. SINGER
2705 Bayview Drive
Suite B
Manhattan Beach, CA 90266
(310) 545-3826
Counsel of Record for
Petitioners Atlantic Healthcare
Benefits Trust, et al.

November 1, 1993